

BroadNet

The BroadNet Alliance

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FILED ELECTRONICALLY

September 3, 2003

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12 Street, SW
Washington, DC 20554

**Re: CC Docket No. 02-33 -- Appropriate Framework for Broadband Access to
the Internet over Wireline Facilities
*Ex Parte Communication***

Dear Ms. Dortch:

Pursuant to Section 1.1206(a)(1) of the Commission's Rules, on behalf of The BroadNet Alliance (BroadNet), I am filing this letter to FCC Chairman Michael K. Powell electronically on behalf of the BroadNet Alliance and other signatories regarding the above mentioned rulemaking.

If there are any questions regarding this submission, please contact me at the above number.

Respectfully submitted,

Maura Corbett
Executive Director

September 3, 2003

The Honorable Michael K. Powell
Chairman
Federal Communications Commission
The Portals
TW-A325
445 12th Street, S.W.
Washington, D.C. 20554

Dear Chairman Powell:

The undersigned organizations, representing diverse interests that will be affected by the Commission's decision in the *Wireline Broadband* proceeding, write to express their united support for a few central principles with which we all agree. We urge the Commission to be guided by these principles in its *Wireline Broadband* decision.

1. Diversity Among Broadband ISPs Is in the Public Interest

Today there is vigorous competition and variety among Internet Service Providers ("ISPs") offering high-speed Internet access services over wireline broadband transmission facilities. ISPs, whether independent or affiliated with Incumbent Local Exchange Carriers (ILECs), compete with one another for retail customers, distinguishing themselves on price, service quality, customer service, features like spam protection, content, privacy protection and other points. Such competition and diversity also provides market-based assurance to e-commerce companies, that ISPs will not hinder access to their websites. Consumers may determine for themselves, for example, whether to pay more for an ISP with better customer service, pay less for a service with more pop-up ads, or what they want from among a huge variety of combinations of distinguishing features and characteristics that define the retail wireline broadband ISP market in a given region. Enabling consumers to choose from among a large variety of wireline broadband ISPs provides a tremendous benefit to consumer welfare and promotes the next generation of investment and innovation in new applications and services.

2. Current Commission Treatment of Wholesale Wireline Broadband Transmission Services Has Been a Success

According to the Commission's most recent data, the number of high-speed asymmetrical digital subscriber line ("ADSL") arrangements in service increased by 64 percent in 2002, compared to 61 percent for cable modem service. Driving this growth in the use of wireline broadband transmission are innovative ISPs, e-commerce companies, and others providing consumers with a reason to want broadband service by providing content, applications, and other features capitalizing on the capabilities of broadband.

All of this progress has occurred under the Commission's current regulatory framework for wireline broadband transmission services. To the extent that ILECs argue that progress could be greater, they have failed to demonstrate any causative connection with current regulations. And even if they could, we would urge the Commission to consider with the help of interested parties ways of addressing any specific negative impact shown without dismantling the very framework that has made internet access a reality for millions of American consumers.

3. The Commission Should Continue to Require Non-Discriminatory Access to ILEC Wireline Broadband Transmission Services

In light of the significant public interest benefits of diversity among wireline broadband ISPs and the absence of any demonstrated harm to the public interest caused by current regulations, the Commission should preserve non-discriminatory access to ILEC wireline broadband transmission services. Permitting ILECs to discriminate in favor of affiliated or preferred ISPs would harm competition and consumer welfare by reducing ISP diversity.

Under current regulations, all ISPs are able to obtain wireline broadband transmission services from ILECs on non-discriminatory rates, terms, and conditions. Without this transmission, ISPs would be virtually unable to provide competitive high-speed Internet access service to the mass market. Non-discriminatory rates, terms and conditions for transmission service enable ISPs to distinguish their retail products as they see fit. Legalized discrimination in favor of ILEC-preferred ISPs would result in non-preferred ISPs facing an insurmountable competitive disadvantage and being driven from the marketplace until there is but one ISP remaining on an ILEC's wireline broadband platform in each ILEC service area. This result would disserve the public interest.

For these reasons, we urge the Commission to preserve ISP competition and consumer choice in wireline broadband services by maintaining rules designed to ensure that ILECs provide nondiscriminatory access to wireline broadband transmission services under Title II of the Communications Act.

Sincerely,

Maura Corbett, Executive Director, **The Broadnet Alliance**

Russell Frisby, President, **Competitive Telecommunications Association (CompTel)**

Andy Schwartzman, President & CEO, **Media Access Project (MAP)**

Karen Kerrigan, Chairman, **Small Business Survival Committee (SBSC)**

Mark Uncapher, Senior Vice President & Counsel, **Information Technology Association of America (ITAA)**

David Bergmann, Chair, **National Association of State Utility Consumer Advocates (NASUCA)**

Amy Wolverton, Associate Legal Counsel, **The Campaign Legal Center**:

Steven Teplitz, Vice President and Associate General Counsel, **AOL Time Warner**

Frank Simone, Government Affairs Director, **AT&T**

Rick Jorgensen, President and General Partner, **Cellular XL Associates**

Dave Baker, Vice President, Law & Public Policy, **Earthlink**

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Richard Whitt, Senior Counsel, Director of Internet and Data Markets, **MCI**

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Cc: Commissioner Kathleen Abernathy

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